

UNITED STATES OF AMERICA
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

CHAIRMAN:
Judge Wm. Terrell Hodges
United States District Court
Middle District of Florida

MEMBERS:
Judge John F. Keenan
United States District Court
Southern District of New York

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Judge Kathryn H. Vratil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

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DEC 06 2005

**U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS**

December 2, 2005

Loretta G. Whyte, Clerk
U.S. District Court
102 Versailles Street
Suite 501
Lafayette, LA 70501

Re: MDL-1657 -- In re Vioxx Products Liability Litigation

(See Attached Schedule A of Order)

Dear Ms. Whyte:

I am enclosing a certified copy and one additional copy of a transfer order filed today by the Panel in the above-captioned matter. The order is directed to you for filing.

The Panel's governing statute, 28 U.S.C. §1407, requires that the transferee clerk "...transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred."

The Panel has ordered that its Rule 1.6(a), pertaining to transfer of files, be suspended for purposes of this litigation. Accordingly, the transferee district clerk shall request, and the transferor district clerk shall forward, only those files deemed necessary by the transferee district court.

A list of involved counsel is attached.

Very truly,

Michael J. Beck
Clerk of the Panel

By


Deputy Clerk

Enclosures/Attachment

cc: Transferee Judge: Judge Eldon E. Fallon
Transferor Judges: (See Attached List of Judges)
Transferor Clerks: (See Attached List of Clerks)

DEC - 2 2005

FILED
CLERK'S OFFICE

DOCKET NO. 1657

***BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE VIOXX PRODUCTS LIABILITY LITIGATION***

***BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.
LOWELL JENSEN, J. FREDERICK MOTZ,* ROBERT L. MILLER, JR.,
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL***

TRANSFER ORDER

Presently before the Panel are motions, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by a health care defendant in the Southern District of Texas action and plaintiffs in the remaining actions listed on Schedule A to vacate the Panel's orders conditionally transferring the actions to the Eastern District of Louisiana for inclusion in the Section 1407 proceedings occurring there in this docket. Merck & Co., Inc., favors inclusion of these actions in MDL-1657 proceedings.

On the basis of the papers filed and hearing session held, the Panel finds that these actions involve common questions of fact with actions in this litigation previously transferred to the Eastern District of Louisiana. Transfer of the actions to that district for inclusion in the coordinated or consolidated pretrial proceedings occurring there will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Any pending motions to remand to state court can be presented to and decided by the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2d Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001). The Panel further finds that transfer of these actions is appropriate for the reasons expressed in the original order directing centralization in this docket. In that order, the Panel held that the Eastern District of Louisiana was a proper Section 1407 forum for actions involving claims of liability for allegedly adverse effects arising from the ingestion of Vioxx. *See In re Vioxx Products Liability Litigation*, 360 F.Supp.2d 1352 (J.P.M.L. 2005).

The opposing Tennessee plaintiff and the Texas health care defendant argue that the presence of individual and/or local questions of fact as well as differing legal theories should militate against inclusion of these actions in MDL-1657 proceedings. We are unpersuaded by these arguments. Inclusion of these actions in Section 1407 proceedings has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) prevents repetition of previously considered matters; 2) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues, *In re Multi-Piece Rim Products*

* Judge Motz took no part in the decision of this matter.

Liability Litigation, 464 F.Supp. 969, 974 (J.P.M.L. 1979); and 3) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. *See In re StarLink Corn Products Liability Litigation*, 152 F.Supp.2d 1378 (J.P.M.L. 2001). It may be, on further refinement of the issues and close scrutiny by the transferee judge, that some claims or actions can be remanded to their transferor districts for trial in advance of the other actions in the transferee district. Should the transferee judge deem remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Rule 7.6, R.P.J.P.M.L., 199 F.R.D. at 436-38.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, these actions are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Eldon E. Fallon for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1657 -- In re Vioxx Products Liability Litigation

Southern District of Alabama

Marquerite Woods v. Merck & Co., Inc., et al., C.A. No. 2:05-425

Middle District of Florida

Barbara Fowler-Browning, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-586

Northern District of Illinois

James Zafiratos v. Merck & Co., Inc., et al., C.A. No. 1:05-3784

Southern District of Illinois

Stanley Hayes v. Merck & Co., Inc., et al., C.A. No. 3:05-450

Clara Kirkendall v. Merck & Co., Inc., et al., C.A. No. 3:05-562

Mary Hardin v. Merck & Co., Inc., et al., C.A. No. 3:05-563

Western District of Kentucky

Lois Hammond, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-351

Eastern District of Missouri

Harriet Aldridge, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-847 **SNL**

Mona Swint, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-879 **JCH**

Sam Fife, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-880 **CDP**

Vanita Copeland, et al. v. Merck & Co., Inc., et al., C.A. No. 4:05-881 **HEA**

District of Nevada

Duane Allen Carlson, et al. v. Merck & Co., Inc., et al., C.A. No. 2:05-599

Nina Baker, et al. v. Merck & Co., Inc., et al., C.A. No. 2:05-625

Daniel Morrison, et al. v. Merck & Co., Inc., et al., C.A. No. 2:05-627

Sharon Himmel, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-334

Sean Regan, et al. v. Merck & Co., Inc., et al., C.A. No. 3:05-336

Western District of New York

Lynn Krieger v. Merck & Co., Inc., et al., C.A. No. 6:05-6338

District of Oregon

Wayne S. Harger v. Merck & Co., Inc., et al., C.A. No. 6:05-6184

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Eastern District of Tennessee

Louise Denton v. Merck & Co., Inc., C.A. No. 2:05-170

Southern District of Texas

Jackie Roberts, etc. v. Juan Marcos Garcia, M.D., et al., C.A. No. 1:05-210

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